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NEXTEL

RECEIVED

July 8, 1994

JUL 8 1994

Mr. William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, N.W.
Room 222
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

EX PARTE

Re: GN Docket No. 93-252

Dear Mr. Caton:

On behalf of Nextel Communications, Inc. and pursuant to Section 1.1206 of the Federal Communications Commission's Rules, this letter constitutes notice that the undersigned met yesterday with Ms. Karen Brinkman, Special Assistant to Chairman Reed Hundt, to discuss matters relating to the above-referenced docket, including the Commission's proposed spectrum cap on CMRS providers and its proposed licensing, technical and operational rule revisions for creating regulatory symmetry among all CMRS licensees.

An original and one copy of this letter have been filed with the Secretary pursuant to Section 1.1206. Should any questions arise in connection with this notification, please do not hesitate to contact the undersigned.

Respectfully submitted,

NEXTEL COMMUNICATIONS, INC.



Robert S. Foosaner
Senior Vice President
Government Affairs

cc: Karen Brinkman

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EX PARTE OR LATE FILED
BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

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JUL 8 1994

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of)
)
Rules and Policies Regarding) CC Docket No. 91-281
Calling Number Identification)
Service -- Caller ID)

To: The Commission

OPPOSITION OF NEXTEL COMMUNICATIONS, INC. TO
PETITIONS FOR RECONSIDERATION

I. INTRODUCTION

Nextel Communications, Inc. ("Nextel"), pursuant to the Notice published in the June 23, 1994 Federal Register, hereby files its Opposition to certain Petitions For Reconsideration in the above-captioned proceeding.

On March 29, 1994, the Federal Communications Commission ("Commission") released a Report and Order and Further Notice of Proposed Rule Making ("Report and Order") herein, establishing its Caller ID policy. The Commission amended Part 64 of its Rules to require common carriers, using Common Channel Signalling System 7 ("SS7") and subscribing to or offering any service based on SS7 functionality, to transmit the calling party number ("CPN") parameter and the associated privacy indicator on an interstate call to connecting carriers.^{1/} The Report and Order also required that carriers offering CPN delivery services, such as Caller ID, provide at no charge to the caller, an automatic per call blocking mechanism for interstate calls, and that terminating

^{1/} Report and Order at para. 3.

carriers honor the privacy indicator.^{2/}

The effect of the Report and Order is that common carriers must offer CPN-based services for interstate calls with a per call blocking option; the Commission prohibited the use of per-line blocking on any interstate call. The Commission found that per-call blocking is in the public interest because it strikes the proper balance between the protection of individual privacy rights and the potential efficiency gains to be realized through nationwide Caller ID availability.^{3/}

As a provider of advanced telecommunications services, Nextel is in a position to offer its customers a myriad of enhanced services that depend on the availability and use of calling party number ("CPN") information. Nextel is therefore participating in this proceeding to ensure that Caller ID and other CPN-based services are widely available to service providers and mobile telecommunications users.

Nextel files this Opposition to those Petitions for Reconsideration which encourage the Commission to relinquish its Caller ID policy and place it into the hands of the 50 individual states. Due to the complexities that would arise with numerous and conflicting Caller ID policies, Nextel proposes that the Commission retain its per-call blocking policy on Caller ID and preempt all

^{2/} Id. The Commission also required carriers to notify subscribers about the Caller ID service, informing them that their number will be transmitted to the called party. Carriers are also required to provide instructions to subscribers for blocking the release of their telephone number.

^{3/} Report and Order at para. 46.

inconsistent state regulation, thereby providing consumers with a single, uniform Caller ID service that applies equally to both interstate and intrastate calls made from any jurisdiction in the country.

II. BACKGROUND

Nextel is this country's largest provider of Specialized Mobile Radio ("SMR") and Enhanced Specialized Mobile Radio ("ESMR") services. Nextel's ESMR systems provide wide-area voice and data communications, dispatch services, and paging capabilities all in a single handset through the combination of digital technology and a low-power, low-tower multiple base station configuration which increases user capacity by up to 30 times the capacity of its existing SMR stations. Using this state-of-the-art digital technology, Nextel can provide its customers a number of advanced telecommunications services, including Caller ID, calling party name ID, advanced and efficient call screening techniques, pre-selected call-forwarding capability, as well as other enhanced services. Nextel's ability to provide these services is dependent upon CPN information being provided to it by local and interexchange carriers.

Caller ID, moreover, is particularly beneficial to Nextel's customers since they, as users of mobile communications services, typically bear the cost of incoming calls. Caller ID would therefore allow Nextel's customers to manage and control their monthly bills by answering only particular, pre-selected incoming calls and routing others directly to the voice mail or paging

alternatives that are integral components of the Nextel system.

III. SUMMARY OF THE PETITIONS FOR RECONSIDERATION

In response to the Report and Order, Nextel and others sought reconsideration of the Commission's decision not to explicitly preempt all inconsistent state Caller ID regulations. In the Report and Order, the Commission established a policy which mandated a per-call blocking option on all interstate calls while specifically prohibiting states from allowing a per-line blocking option on interstate calls. However, the Commission did not explicitly prohibit per-line blocking of intrastate calls, which according to several commenters, will create customer confusion and frustration when faced with differing state and federal policies.^{4/}

Several other commenters, mostly state public utility commissions, argue that the Commission's Report and Order has impermissibly preempted state regulations by prohibiting all per-line blocking on interstate calls.^{5/} By mandating per-call blocking on all interstate calls, they argue, the Commission has impliedly prohibited per-line blocking on intrastate calls since

^{4/} Petition For Reconsideration of Pacific Bell at 7. Pacific Bell has also filed a petition in CC Docket No. 90-623 seeking an indefinite waiver of its state and federal Caller ID tariffing requirements. Pacific Bell asserted that waiver was necessary because it cannot comply with contradictory Commission and California Caller ID rules. The Commission granted Pacific Bell's waiver request on June 27, 1994 until 90 days after the Commission issues its order on reconsideration in this docket.

^{5/} See Petitions For Reconsideration of Sage and Soar; Public Utilities Commission of Colorado; Attorney Generals of North Carolina, Florida, et al.; Alabama PSC; Nevada Bell; Indiana Utility Regulatory Commission.

carriers do not have the technical capability to comply with two sets of Caller ID blocking policies. According to these parties, such implicit preemption is unwarranted in this case.^{6/}

**IV. ENACTING A SINGLE, UNIFORM CALLER ID POLICY
WILL PROMOTE THE DEVELOPMENT AND DEPLOYMENT OF
UBIQUITOUS ENHANCED TELECOMMUNICATIONS SERVICES**

Nextel is a provider of the next generation of wireless telecommunications services. As such, Nextel can provide customers with services mirroring those the Commission is promoting through its Personal Communications Services ("PCS") proceedings.^{7/} Nextel intends to provide consumers with a mobile communications product that introduces an entirely new family of communications services through a "small, lightweight, multi-function portable phone..."^{8/} Many of these functions, however, depend on the use and application of CPN information.

For example, using CPN-based data, a Nextel subscriber could readily identify the calling party (or identify the fact that he or she does not know the calling party) and determine whether or not to accept and pay for that incoming call. A Nextel subscriber could pre-select certain phone numbers to be automatically blocked,

^{6/} Southwestern Bell proposes that the Commission adopt a regulatory scheme wherein the governing Caller ID policy is the one imposed by the state in which the call originates. This policy would create a morass of Caller ID regulations, resulting in a highly complex Caller ID environment.

^{7/} Amendment of the Commission's Rules to Establish New Personal Communications Services, GEN Docket No. 90-314, RM-7140, et al.

^{8/} Memorandum Opinion and Order, GEN Docket No. 90-314, Released June 13, 1994 at p. 3.

automatically routed elsewhere, or allowed through to the subscriber's mobile unit. These advanced services would enable a Nextel subscriber to better manage his or her communications system, to ensure that important calls are received, and to control the amount of his or her monthly bill by screening incoming calls. Such services are technically feasible today on Nextel's ESMR system, are desired by telecommunications customers, are being promoted by the Commission in its PCS proceedings, and are in the public interest.

Effective implementation, provision and use of these services, however, is dependent upon the development of a procedure that is user-friendly. Consumers do not want advanced telecommunications services that are as difficult as programming a VCR or a home computer. Use of telephones, whether wireless or wireline, have historically required little or no training and have been available for use by persons of almost all ages and backgrounds. Consumers expect continued ease of use even with enhanced telecommunications functions, features and capabilities.

Conflicting state and federal Caller ID policies would create widespread confusion among customers and would require that consumers learn a complex set of rules and regulations that will differ depending on the state in which the call is made and further differ depending on whether that call is interstate or intrastate. This will not only make these enhanced services undesirable to consumers, but will also lessen the customer's own ability to control his or her privacy. With a single Caller ID policy -- a

federal policy mandating a per-call blocking option -- consumers will have only one set of procedures to follow in making any call from anywhere and will therefore be less likely to unwittingly transmit their phone numbers.

For example, if the Commission permits states to implement per-line blocking on intrastate calls and a party opts for the per-line blocking option, that caller will be able to make intrastate calls (some local and some long-distance) without dialing a code to prevent the transmission of his number. However, if that same caller makes an interstate call, he must remember to dial in the necessary code to block the transmission of his number pursuant to the federal policy.

To further complicate matters, if the caller is a mobile customer, the appropriate blocking mechanism could change daily as he or she travels from one jurisdiction to another. Before each call is made, the mobile customer must know which jurisdiction he or she is in, the Caller ID rules of that jurisdiction, the proper code to dial in to either block or unblock CPN transmission, and then remember how those rules apply to an interstate or intrastate call. These complexities would both undercut the desirability and usefulness of such enhanced services and would increase the likelihood of a customer inadvertently transmitting his or her number.

For these reasons, the public interest would be best served by the Commission exercising its legal authority to impose a single federal Caller ID policy that would properly integrate the ability

of consumers to ensure that their privacy can be easily protected while ensuring the deployment of enhanced telecommunications services. When a state regulation is preventing or impeding the provision of a uniform federal policy, the Commission may preempt that state policy.^{9/} Conflicting state and federal Caller ID rules will not only confuse consumers as described above, but conflicting rules may also make it impossible for providers to comply with Caller ID regulations. Parties have presented evidence that conflicting sets of regulations raise serious issues about the ability of local exchange carriers and other service providers to comply with both sets of rules.^{10/}

Nextel recognizes and is sensitive to the legitimate privacy concerns raised in the Petitions For Reconsideration filed by state regulatory authorities. However, under the Commission's decision to adopt a uniform policy permitting only per-call blocking and prohibiting per-line blocking, consumers will likely realize a higher level of protection than they would with a maze of state Caller ID policies. On balance, a consistent, uniform approach is

^{9/} See State Corporation Commission of Kansas v. FCC, 787 F.2d 1421, 1426 (10th Cir. 1986) ("Whenever state regulation would frustrate achievement of a federal regulatory objective, FCC jurisdiction is paramount and conflicting state enactments must yield.")

^{10/} The Competitive Telecommunications Association ("CompTel") asserts that preemption is necessary, stating that the Commission "should state explicitly that its regulations will preempt state rules whenever state and federal ... regulations cannot be complied with simultaneously." Petition for Clarification and Partial Reconsideration of CompTel at 9. Expressly preempting the states at this time, CompTel argues, will serve the public interest by providing guidance to carriers that are attempting to choose between conflicting policies. Id.

the most practical and effective policy for all interested parties because it will facilitate the availability of innovative, enhanced, CPN-based services while protecting the privacy rights of consumers who will have a better understanding and knowledge of the single Caller ID standard.^{11/}

VI. CONCLUSION

The provision of enhanced telecommunications services that depend upon the availability of CPN-based information can only be achieved on a ubiquitous, nationwide basis if service providers are subject to a single Caller ID policy that permits the use of CPN information while protecting the privacy rights of individuals. The Commission can achieve this uniformity and simplicity while protecting privacy rights if it preempts state regulation of Caller ID to the extent those regulations are inconsistent with the Commission's per-call blocking Caller ID policy. Only by providing uniformity and simplicity can the Commission ensure the rapid development and deployment of enhanced telecommunications services

^{11/} The relative importance of the reason behind the state's regulation is not dispositive of the Commission's authority to preempt a state regulation. See Fidelity Federal Savings and Loan Association v. De La Cuesta, 458 U.S. 141, 153 (1981), in which the United States Supreme Court stated that

"The relative importance to the State of its own law is not material when there is a conflict with a valid federal law, for the Framers of our Constitution provided that the federal law must prevail."

-10-

and, at the same time, ensure that consumers know how to and are able to protect their privacy rights.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Robert S. Foosaner", written over a horizontal line.

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July 8, 1994

CERTIFICATIONS OF SERVICE

I, Rochelle L. Pearson, hereby certify that on this 8th day of July, 1994, I caused a copy of the attached Opposition of Nextel Communications, Inc. to be served by hand delivery or first-class mail, postage prepaid to the following:

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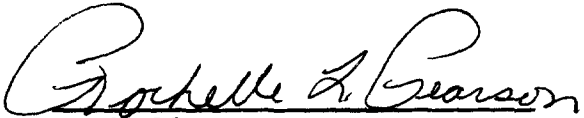
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